

March 5, 2004

The Honorable Joseph B. Meyer  
Secretary of State  
State Capitol  
Cheyenne, WY 82002

Dear Secretary Meyer:

I am fundamentally in agreement with the proposed statute with the following exceptions.

I have used my line-item veto authority on two sections of the budget bill, HEA77. I will explain why I have found it necessary to use this power.

Section 301 (b) on page 34 essentially reduces the amount of Coal Lease Bonus funds in the public school capital construction account for the funding of years 3, 4, and 5 of the 5-year plan developed by the School Facilities Construction Commission. This Footnote allows for a reduction of the proposed appropriation by the amount of Coal Lease Bonus revenues deposited into the school capital construction account for lease sales accruing after the legislative session. Based on current projections, this may defeat our commitment to fully fund the first 5-year plan. The impact of this veto is to leave funds in the School Capital Construction Account for future funding of years 3, 4, and 5 rather than leave additional funds in the Budget Reserve over and above the currently projected \$68 million.

School finance litigation can be divided into two components: that dealing with school capital construction and that dealing with school foundation monies. The Supreme Court has retained jurisdiction over the school capital construction litigation that has occurred over the past several years. I have instructed the AG's Office, if the Legislature has fully committed to a funding plan for school capital construction, to file pleadings with the Wyoming Supreme Court seeking Supreme Court endorsement that the Legislature's hard work on the thorny issue of school capital construction passes constitutional muster. This work includes the creation of the School Facilities Commission, school districts' submission of five-year plans, the review and approval of the five-year plans, and last, but not least, the funding of actual construction during this biennium.

The Supreme Court has told the State we need to fully fund school capital construction, not partially fund it. Nearly ten years ago, the Court stated:

"It simply will not do to set up a legislative scheme to raise funds for that purpose [capital construction] and then turn around and allow the diversion of those funds to

another purpose.”

*Campbell County School District v. State*, 907 P.2d. 1238, 1275 (Wyo. 1995).

In *Campbell III*, the Court stated:

“[T]his court will not consider the funds until they are available to be spent.”

*State v. Campbell County School District*, 32 P.3d 325, 327 (Wyo. 2001).

We are fortunate to have the revenue to take care of this pressing problem now. We cannot fritter away this important opportunity.

My critics may allege that my estimates of future coal lease bonus payments to the State are very conservative. I will freely admit to that sin, if in fact being overly cautious is a sin. If the critics are right and there are coal lease bonuses paid to the State that exceed my estimates, the State will have additional monies in the future. I would rather totally set aside the money to build schools now and evaluate how much additional money we have from coal lease bonuses once those monies have actually been received by the State. The Wyoming public education system is far too important for me to gamble with rosy revenue forecasts. We have the money now. We must set aside all money to build public schools now and not try to replace that money with future revenue projections.

I have decided to exercise line-item veto authority over Footnote 5 to the Department of Education budget. See SECTION 005, p. 5.

As presented to me, the footnote only supports two programs – WedGate and Teacher and Leader Quality. In omitting two other educational programs – Early Childhood Programs and the Student Activities Consortium – they are essentially denied funding. As I can find no reason to reject funding for these two programs, I therefore strike portions of the Footnote to allow their inclusion. As a result of this action, Footnote 5 now reads:

5. this school foundation program account appropriation and notwithstanding W.S. 21-13-306, two million eight hundred twenty-seven thousand four hundred twenty dollars (\$2,827,420.00) shall be expended for Wyoming education.

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This will allow school foundation program money to be spent by the Department of Education on all four programs contemplated by the appropriation.

Best regards,

Dave Freudenthal  
Governor

DF:bjw

c: Senate President April Brimmer Kunz  
House Speaker Fred Parady  
Legislative Service Office